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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,905	12/13/2001	Fred Oswald	U 013381-1	1984

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26 West 61 Street
New York, NY 10023

EXAMINER

LAZOR, MICHELLE A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/021,905

Applicant(s)

OSWALD ET AL.

Examiner

Michelle A Lazor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) 1,24 and 39-76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,12,15,17-23,25,31,33,35-38 and 77-79 is/are rejected.
- 7) ☒ Claim(s) 4-11,13,14,16,26-30,32 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/7/02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 1, 24, 39 – 76 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in paper received 5/3/04.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 2, 3, 12, 15, and 77 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (U.S. Patent No. 2040666).

Miller discloses a method of vibrating a bar or agitator rod (1) including the steps of seating one end of said bar in a housing (3) and vibrating said housing to impart vibrations to said bar, comprising seating the vibrator housing over an end of the bar, and extending a bore at least part way through said housing, the bore being open to receive the end of the bar, wherein the housing and vibrating unit are a unitary member (Figure 1; column 1, lines 30 – 45 and column 3, lines 9 – 22). Thus Miller discloses all the limitations of Claims 2, 3, 12, 15, and 77, and anticipates the claimed invention.

4. Claims 2, 12, and 77 are rejected under 35 U.S.C. 102(b) as being anticipated by Deniau (U.S. Patent No. 2015217).

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Deniau discloses a method of vibrating a bar (39) including the steps of seating one end of said bar in a housing (Figure 1) and vibrating said housing to impart vibrations to said bar, comprising seating the vibrator housing over an end of the bar, while the housing is secured to a casing encompassing a vibrating unit (40) (column 3, lines 9 – 13). Thus Deniau discloses all the limitations of Claims 2, 12, and 77, and anticipates the claimed invention.

5. Claims 12 and 77 – 79 are rejected under 35 U.S.C. 102(b) as being anticipated by Hata et al. (JP 07048927).

Hata et al. disclose a method of setting concrete including the steps of providing a plurality of reinforcing bars, pouring wet concrete around said bar, seating a protruding end of said bar in a vibratory housing, and imparting vibrations to said at least partially embedded bar, wherein the casing is secured to a casing encompassing a vibrating unit (Figure 5; Abstract). Thus Hata et al. disclose all the limitations of Claims 12 and 77 – 79, and anticipate the claimed invention.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 3, 12, 15, 25, 31, 33, and 77 – 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gretter (U.S. Patent No. 3992844) in view of Miller.

Gretter discloses a method of setting concrete including the steps of providing at least one reinforcing bar, pouring wet concrete around said bar, and imparting vibrations to said at least

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partially embedded bar (column 3, lines 14 – 30), but does not specifically disclose seating one end of said bar in a housing and vibrating said housing to impart vibrations to said bar, comprising seating the vibrator housing over an end of the bar, and extending a bore at least part way through said housing, the bore being open to receive the end of the bar, wherein the housing and vibrating unit are a unitary member. However, Miller discloses seating one end of said bar or rod (1) in a housing (3) and vibrating said housing to impart vibrations to said bar, comprising seating the vibrator housing over an end of the bar, and extending a bore at least part way through said housing, the bore being open to receive the end of the bar, wherein the housing and vibrating unit are a unitary member (Figure 1; column 1, lines 30 – 45 and column 3, lines 9 – 22). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use a housing where the bar is inserted into said housing, wherein vibrations are imparted to said bar to easily assist the concrete to flow around the bar or rod (Gretter: column 3, lines 19 – 21).

8. Claims 17 – 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller as applied in Claim 12 above, in view of Thomas (U.S. Patent No. 1927075).

Regarding Claims 17 and 18, Miller discloses all the limitations of Claim 12, but does not disclose an eccentric weight rotatable in the casing comprising extending a shaft longitudinally within the casing wherein the shaft is rotatable by an external source, and wherein the eccentric weight is provided on said shaft. However, Thomas discloses an eccentric weight (18) rotatable in the casing comprising extending a shaft (19) longitudinally within the casing wherein the shaft is rotatable by an external source (21), and wherein the eccentric weight is provided on said shaft (column 2, lines 82 – 94 and column 3, lines 8 – 19). Therefore it would have been obvious to

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one of ordinary skill in the art at the time of the invention to use an eccentric weight on a shaft since this is a well known and conventionally used vibratory method in the art.

Regarding Claims 19 – 23, Thomas discloses the casing to be cylindrical and the axis of the rotatable shaft to be concentric with the axis of the casing, wherein the shaft and the eccentric weight are a unitary casting, which are secured or keyed to one another (Figure 1). Additionally, Thomas discloses providing a seal surrounding said rotatable shaft (Figure 1; column 2, lines 74 – 81). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to design the shaft with the eccentric weight as described above to facilitate and simplify the manufacturing process, and to decrease maintenance problems for the vibrator.

9. Claims 17 – 23 and 35 – 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gretter and Miller as applied in Claims 12 and 31 above, in view of Thomas.

Regarding Claims 17, 18 and 35, Gretter and Miller disclose all the limitations of Claim 12, but do not disclose an eccentric weight rotatable in the casing comprising extending a shaft longitudinally within the casing wherein the shaft is rotatable by an external source, and wherein the eccentric weight is provided on said shaft. However, Thomas discloses an eccentric weight (18) rotatable in the casing comprising extending a shaft (19) longitudinally within the casing wherein the shaft is rotatable by an external source (21), and wherein the eccentric weight is provided on said shaft (column 2, lines 82 – 94 and column 3, lines 8 – 19). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use an eccentric weight on a shaft since this is a well known and conventionally used vibratory method in the art.

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Regarding Claims 19 – 23 and 36 – 38, Thomas discloses the casing to be cylindrical and the axis of the rotatable shaft to be concentric with the axis of the casing, wherein the shaft and the eccentric weight are a unitary casting, which are secured or keyed to one another (Figure 1). Additionally, Thomas discloses providing a seal surrounding said rotatable shaft (Figure 1; column 2, lines 74 – 81). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to design the shaft with the eccentric weight as described above to facilitate and simplify the manufacturing process, and to decrease maintenance problems for the vibrator.

Allowable Subject Matter

10. Claims 4 – 11 and 26 – 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There was no reference in the prior art search that disclosed, taught, or suggested a plug within the housing and wherein the bore is provided in the plug. None of the references in the prior art search disclosed using plugs.

11. Claims 13, 14, 16, 32, and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There was no reference in the prior art search that disclosed, taught, or suggested the housing being secured to the vibrator unit by at least one strap element, and did not disclose fins extending radially outwardly from the vibrator unit, as claimed.

Conclusion

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12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Both Casters (U.S. Patent No. 6481923) and Læuppi et al. (U.S. Patent No. 4798495) disclose vibrating reinforcing bars (Figure 2; column 6, lines 6 – 11; column 3, line 63 – column 4, line 4, *respectively*).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle A Lazor whose telephone number is 571-272-1232. The examiner can normally be reached on Mon - Wed 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MAL
5/11/04



MICHAEL COLAIANNI
PRIMARY EXAMINER